

Required fields are shown with yellow backgrounds and asterisks.

Page 1 of \* 30      SECURITIES AND EXCHANGE COMMISSION      File No.\* SR - 2015 - \* 144  
 WASHINGTON, D.C. 20549      Form 19b-4      Amendment No. (req. for Amendments \*)

Filing by NASDAQ Stock Market  
 Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial * <input checked="" type="checkbox"/>	Amendment * <input type="checkbox"/>	Withdrawal <input type="checkbox"/>	Section 19(b)(2) * <input checked="" type="checkbox"/>	Section 19(b)(3)(A) * <input type="checkbox"/>	Section 19(b)(3)(B) * <input type="checkbox"/>
Pilot <input type="checkbox"/>	Extension of Time Period for Commission Action * <input type="checkbox"/>	Date Expires * <input type="text"/>	Rule <input type="checkbox"/> 19b-4(f)(1) <input type="checkbox"/> 19b-4(f)(4) <input type="checkbox"/> 19b-4(f)(2) <input type="checkbox"/> 19b-4(f)(5) <input type="checkbox"/> 19b-4(f)(3) <input type="checkbox"/> 19b-4(f)(6)		

Notice of proposed change pursuant to the Payment, Clearing, and Settlement Act of 2010	Security-Based Swap Submission pursuant to the Securities Exchange Act of 1934
Section 806(e)(1) * <input type="checkbox"/>	Section 806(e)(2) * <input type="checkbox"/>
	Section 3C(b)(2) * <input type="checkbox"/>

Exhibit 2 Sent As Paper Document     Exhibit 3 Sent As Paper Document

**Description**  
 Provide a brief description of the action (limit 250 characters, required when Initial is checked \*).  
 A proposed rule change to amend Rules 5810(4), 5810(c), 5815(c) and 5820(d) to modify the process NASDAQ follows when a company fails to hold an annual meeting of shareholders.

**Contact Information**  
 Provide the name, telephone number, and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the action.

First Name \* Sean    Last Name \* Bennett  
 Title \* Associate General Counsel  
 E-mail \* Sean.Bennett@nasdaq.com  
 Telephone \* (301) 978-8499    Fax (301) 978-8472

**Signature**  
 Pursuant to the requirements of the Securities Exchange Act of 1934,  
 has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.  
 (Title \*)  
 Date 11/13/2015    Executive Vice President and General Counsel  
 By Edward S. Knight  
 (Name \*)  
 edward.knight@nasdaq.com

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFF website.

**Form 19b-4 Information \***

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The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.

**Exhibit 1 - Notice of Proposed Rule Change \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 1A- Notice of Proposed Rule Change, Security-Based Swap Submission, or Advance Notice by Clearing Agencies \***

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The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change, security-based swap submission, or advance notice being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)

**Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications**

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Exhibit Sent As Paper Document

Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.

**Exhibit 3 - Form, Report, or Questionnaire**

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Exhibit Sent As Paper Document

Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.

**Exhibit 4 - Marked Copies**

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The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

**Exhibit 5 - Proposed Rule Text**

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The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.

**Partial Amendment**

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If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

1. Text of Proposed Rule Change

(a) Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend Rules 5810(4), 5810(c), 5815(c) and 5820(d) to modify the process NASDAQ follows when a company fails to hold an annual meeting of shareholders.

A notice of the proposed rule change for publication in the Federal Register is attached hereto as Exhibit 1 and the text of the proposed rule change is attached as Exhibit 5.

(b) Not applicable.

(c) Not applicable.

2. Procedures of the Self-Regulatory Organization

The proposed rule change was approved by the Board of Directors of the Exchange on October 17, 2014. No other action by NASDAQ is necessary for the filing of the rule change.

Questions regarding this rule filing may be directed to A. David Strandberg, Nasdaq, Inc. (301) 978-8073 (telephone) or T. Sean Bennett, Nasdaq, Inc., at (301) 978-8499.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

a. Purpose

Each company listing common stock or voting preferred stock, and their equivalents, must hold an annual meeting of shareholders no later than one year after the end of the company's fiscal year and solicit proxies for that meeting.<sup>3</sup> An annual meeting allows the equity owners of the company the opportunity to elect directors and meet with management to discuss company affairs. Currently, should a company fail to hold its annual meeting as required by Rule 5620, staff of the Listing Qualifications Department ("Staff") has no discretion to allow additional time for the company to regain compliance. Rather, Staff is required by Rule 5810(c)(1) to issue a delisting determination, subjecting the company to immediate suspension and delisting unless the company appeals to a Hearings Panel.<sup>4</sup> NASDAQ proposes to amend Rule 5810(4), 5810(c), 5815(c) and 5820(d) to provide Staff with limited discretion to grant a listed company that failed to

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<sup>3</sup> See Rules 5620(a) and (b), respectively. Rule 5615(a)(4)(D) also requires a limited partnership to hold an annual meeting of limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Rule 5615(a)(4)(F) requires the limited partnership to distribute information statements or proxies when a meeting of limited partners is required. The proposed process described herein would apply in the identical manner to limited partnerships required to hold a meeting as it does to other companies. See also Rules 5615(a)(4)(E) and (F) (partner meetings and proxy solicitation of limited partnerships).

<sup>4</sup> A listed company may request review of a Staff Delisting Determination by a Hearings Panel. A timely request for a hearing will stay the suspension and delisting pending the issuance of a written Panel Decision. See Rule 5815.

hold its annual meeting of shareholders an extension of time to comply with the requirement.<sup>5</sup>

NASDAQ notes that the only other rule where a company is subject to immediate suspension and delisting, besides when it fails to solicit proxies and hold an annual meeting, is when Staff makes a determination pursuant to the Rule 5100 Series that the company's continued listing raises a public interest concern. This determination generally is made only following discussion and review of the facts and circumstances with the company. For all other deficiencies under the Rule 5000 Series, a listed company is provided with either a fixed compliance period within which to regain compliance,<sup>6</sup> or given the opportunity to submit a plan to regain compliance, which Staff reviews to determine whether to grant the company a limited time to implement.<sup>7</sup> Generally, a company is allowed 45 days to submit the plan of compliance<sup>8</sup> and, upon review of the plan, Staff may grant the company up to 180 days from the date of Staff's initial notification of the company's non-compliance to regain compliance. If upon review of the company's plan Staff determines that an extension is not warranted, Staff

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<sup>5</sup> The Exchange notes that companies and certain limited partnerships are also required to solicit proxies and provide proxy statements for all meetings of shareholders or partners. See Rules 5620(b) and 5615(a)(4)(F), respectively. A company or limited partnership that has not timely held an annual meeting has not violated the proxy solicitation rule because no meeting has been held.

<sup>6</sup> See Rule 5810(c)(3).

<sup>7</sup> See Rule 5810(c)(2).

<sup>8</sup> Companies deficient with the filing requirement are provided up to 60 days to submit a plan of compliance. Staff can shorten these deadlines where deemed appropriate.

will issue a Delisting Determination, which triggers the company's right to request review by a Hearings Panel.

There are a variety of reasons a company may fail to timely hold an annual meeting. In many of these cases, the circumstances that precipitated the delay may arise just before a planned meeting. For example, NASDAQ has observed cases where a company has attempted to hold an annual meeting before the deadline, but was required to adjourn and reschedule the meeting to allow its shareholders more time to review proxy materials in connection with a shareholder proxy contest. NASDAQ has also encountered companies that could not hold an annual meeting because they were delinquent in filing periodic reports and therefore could not include required financial information in a proxy statement. In that case, under the current rules, the company could receive an extension of the time to regain compliance with the filing requirement. However, if during any such compliance period the company subsequently fails to hold an annual meeting of shareholders for any reason, Staff would issue a delist determination at that time for both the filing delinquency and the annual meeting deficiency, notwithstanding that the compliance period for the filing delinquency has not expired.<sup>9</sup> Under these circumstances, as required by the Listing Rules, Staff will notify the company in writing of the annual meeting deficiency<sup>10</sup> and the company must

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<sup>9</sup> See Rule 5810(c)(2)(A).

<sup>10</sup> See Rule 5810(a).

publicly disclose such notification.<sup>11</sup> The deficiency will then be considered at the same time and together with the filing delinquency in any subsequent delisting proceeding.<sup>12</sup>

For these reasons, NASDAQ is proposing to amend Rules 5810(c), 5815(c) and 5820(d) to afford those companies and limited partnerships that fail to hold an annual meeting in accordance with the listing rules an opportunity to submit a plan of compliance for Staff's review.<sup>13</sup> Under proposed Rule 5810(c)(2)(G), Staff's written deficiency notice shall provide the Company with 45 calendar days to submit a plan to regain compliance. A non-compliant company will have to publicly disclose, under both Commission and NASDAQ rules, that it has received notification of non-compliance with the annual meeting rule.<sup>14</sup> In determining whether to grant the Company an extension to comply with the annual meeting requirement, Staff will consider the likelihood that the Company would be able to hold an annual meeting within the exception period, the Company's past compliance history, the reasons for the failure to timely hold an annual meeting, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The proposed rule change will limit the length of an extension granted by Staff, upon review of the plan, to no more than 180 calendar days from the deadline to hold the

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<sup>11</sup> See Rule 5810(b).

<sup>12</sup> See Rule 5810(d).

<sup>13</sup> As noted above, the company or limited partnership generally would have 45 days to submit a plan to regain compliance, although Staff could shorten that period where it believes appropriate.

<sup>14</sup> See Rule 5810(b) and IM-5810-1. See also Item 3.01 of SEC Form 8-K.

annual meeting (i.e., one year after the end of the Company's fiscal year).<sup>15</sup> The proposed rule change will also limit the maximum length of an extension that a NASDAQ Hearings Panel or the NASDAQ Listing and Hearing Review Council<sup>16</sup> may grant for such a deficiency to no more than 360 calendar days from the date of non-compliance with the rule. In doing so, the total time that a company may be granted to regain compliance with the annual meeting requirement is unchanged from the existing rule.<sup>17</sup> The proposed rule change merely vests Staff with the limited discretion to grant an extension to regain compliance for a prescribed portion of this time. NASDAQ believes that the proposed rule change provides consistency with the administration of other continued listing standards where companies are provided a cure period or opportunity to submit a plan to regain compliance after they become deficient, without undermining the requirement that NASDAQ-listed companies hold annual meetings.

Lastly, in accordance with Rule 5810(c)(2) a company or limited partnership not subject to the all-inclusive annual fee program that submits such a plan is subject to the

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<sup>15</sup> NASDAQ has observed that a substantial majority of companies that received delisting notices for failing to solicit proxies and hold their annual meetings regain compliance within a six month period.

<sup>16</sup> The Hearings Panel reviews staff delisting determinations and the Listing and Hearing Review Council reviews Panel Decisions.

<sup>17</sup> Under the current rule, the 360 calendar day limit on extensions starts on the date of Staff's written notification to a company of the deficiency, which is typically the first business day of a calendar year for companies with calendar year fiscal years. Under the proposed rule, the 360 calendar day period would start on the deadline to hold the annual meeting, which is one year after the end of a company's fiscal year. Thus, while the proposal does not change the total length of an extension a company may be granted, the starting date for an extension period under the proposed rule would be a day or two earlier than under the current rule.



\$5,000 compliance plan review fee. Effective January 2018, all companies will be subject to the all-inclusive annual fee program and this fee will no longer be applicable to any company. Further, all companies, regardless of whether they participate in the all-inclusive annual fee program or not, are subject to the \$10,000 fee for each of a Panel hearing and appeal to the Listing and Hearing Review Council set forth in Listing Rules 5815(a)(3) and 5820(a), respectively. Accordingly, under the proposed rule as compared to the current rule, companies and limited partnerships may be subject to these fees at different times, if at all, depending on whether and when they regain compliance. Notwithstanding, a company that elects not to participate in the all-inclusive annual fee program prior to January 2018 will incur the \$5,000 compliance plan review fee whereas a company that has opted-in to the all-inclusive fee will not. This fee would be in addition to any fees incurred in the appellate process.

b. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>18</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

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<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the proposed changes are consistent with these requirements because they permit Staff to grant additional time to a company to comply with the annual meeting requirement in limited situations after Staff review of a compliance plan. The proposed changes, however, do not change the total length of an extension a company may be granted – as is the case under the current rule, such maximum time period would remain 360 calendar days. Furthermore, as is the case under the current rule, a company notified that it is deficient in the annual meeting requirement is required to publicly disclose such notice and the rules basis for it. NASDAQ also separately publicly discloses a list of noncompliant companies and the listing standards with which they do not comply. For these reasons, the proposed rule protects investors and the public interest.

As noted above, there are various reasons why a company may not be able to hold an annual meeting and for which immediate delisting is an inappropriate outcome under the circumstances. In lieu of the current requirement that Staff send an immediate Delisting Determination, the proposal vests Staff with discretion to determine whether the reason for the deficiency and the plan to regain compliance merit an extension. The Rules allow Staff such discretion for other deficiencies, and the only case where Staff sends an immediate Delisting Determination is where Staff has concluded, after review of the facts and circumstances, that continued listing is contrary to the public interest.

NASDAQ believes that it is consistent with the Act to provide Staff with discretion to grant an extension for an annual meeting deficiency based on a plan of compliance, consistent with the process currently used for the majority of deficiencies under NASDAQ's rules. The Exchange is not extending the total time that a company may remain listed on NASDAQ while deficient; rather, the proposed rule change will allow Staff limited discretion to grant an extension to regain compliance with the listing standard for a prescribed portion of this time, which, to the extent exercised, will limit the length of time a Hearings Panel and Listing and Hearing Review Council may subsequently grant. Accordingly, the Exchange believes that the proposal promotes the requirements of the Act by providing Staff with limited discretion to allow additional time where the circumstances do not support immediate delisting, while maintaining Staff's authority to delist a company when warranted.

The Exchange also believes that assessing the \$5,000 compliance plan review fee on companies that have not opted-in to the all-inclusive annual fee program prior to January 2018 is reasonable because NASDAQ is changing the process in an effort to make it more consistent with how other deficiencies are handled. The Exchange notes that companies that do not resolve their annual meeting deficiencies during an extension period provided by Staff under the proposed changes may subsequently be subject to the \$10,000 fee for each of a Panel Hearing and an appeal to the Listing and Hearing Review Council. However, because most companies resolve annual meeting deficiencies within six months, under the proposed rules, they would likely not incur these fees. Further, the Exchange believes that the proposed rule change is equitably allocated because the fees assessed companies as a result of the changes will be allocated uniformly among

similarly-situated companies. Moreover, the Exchange believes that assessing different fees between companies that opt-in to the all-inclusive annual fee program and those that do not is an equitable allocation because participation in the program is elective and available to all listed companies. As a consequence, companies are able to weigh the benefits of the program against the relative risk of incurring additional fees and choose whether opting-in to the program at this juncture is appropriate.

4. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will not burden competition as it provides discretion to Staff to provide a limited time to regain compliance when immediate delisting is not warranted, thereby potentially reducing the time and costs associated with appealing a delisting determination. Moreover, the proposed rule change is intended to promote consistent and fair regulation, and is not being adopted for competitive purposes. To the extent a competitor marketplace believes that the proposed rule change places them at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

6. Extension of Time Period for Commission Action

NASDAQ does not consent at this time to an extension of the time period for Commission action specified in Section 19(b)(2) of the Act.<sup>20</sup>

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2)

The Exchange requests that the Commission approve the proposed rule change on an accelerated basis pursuant to Section 19(b)(2)<sup>21</sup> of the Act. The Exchange is making this request so that the proposed rule change will become effective, and deficient companies can avail themselves of the new process, before Exchange Staff would otherwise have to issue delist determinations in early January 2016 for failing to hold an annual meeting.<sup>22</sup> As discussed above, the Exchange is not extending the total time that a company may remain listed on NASDAQ while deficient; rather, the proposed rule change will allow Staff, upon review of a compliance plan, limited discretion to grant an extension to regain compliance for a prescribed portion of this time, which, to the extent exercised, will limit the length of time a Hearings Panel and Listing and Hearing Review Council may subsequently grant. As such, the Exchange believes that the proposal promotes the requirements of the Act by providing Staff with limited discretion to allow additional time where the circumstances do not support immediate delisting, while maintaining Staff's authority to delist a company when warranted. Further, the proposal will allow certain companies and limited partnerships to focus on steps to regain

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<sup>20</sup> 15 U.S.C. 78s(b)(2).

<sup>21</sup> Id.

<sup>22</sup> Generally, these delist determinations would be issued on or around the first business day of the year, which, for 2016, is January 4, 2016.

compliance rather than expend the time and cost in pursuing an appeal of the delisting determination to a Hearing Panel. For these reasons, and as discussed above, NASDAQ believes that accelerating effectiveness of the proposed change so that it may be implemented on or before January 1, 2016, is consistent with the Act.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

Not applicable.

9. Security-Based Swap Submissions Filed Pursuant to Section 3C of the Act

Not applicable.

10. Advance Notices Filed Pursuant to Section 806(e) of the Payment, Clearing and Settlement Supervision Act

Not applicable.

11. Exhibits

1. Form of Notice of Proposed Rule Change for Federal Register.
5. Text of Proposed Rule Change.

**EXHIBIT 1**

SECURITIES AND EXCHANGE COMMISSION  
(Release No. \_\_\_\_\_ ; File No. SR-NASDAQ-2015-144)

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by The NASDAQ Stock Market LLC to Amend Rules 5810(4), 5810(c), 5815(c) and 5820(d) to Provide Staff with Limited Discretion to Grant a Listed Company that Failed to Hold its Annual Meeting of Shareholders an Extension of Time to Comply with the Requirement

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup>, and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on November 13, 2015, The NASDAQ Stock Market LLC (“NASDAQ” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to amend Rule 5810(c) to provide NASDAQ staff with limited discretion to grant a listed company additional time to solicit proxies and hold an annual meeting of shareholders. The text of the proposed rule change is available from NASDAQ’s website at <http://nasdaq.cchwallstreet.com/Filings/>, at NASDAQ’s principal office, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDAQ has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Each company listing common stock or voting preferred stock, and their equivalents, must hold an annual meeting of shareholders no later than one year after the end of the company's fiscal year and solicit proxies for that meeting.<sup>3</sup> An annual meeting allows the equity owners of the company the opportunity to elect directors and meet with management to discuss company affairs. Currently, should a company fail to hold its annual meeting as required by Rule 5620, staff of the Listing Qualifications Department ("Staff") has no discretion to allow additional time for the company to regain compliance. Rather, Staff is required by Rule 5810(c)(1) to issue a delisting determination, subjecting the company to immediate suspension and delisting unless the company appeals to a

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<sup>3</sup> See Rules 5620(a) and (b), respectively. Rule 5615(a)(4)(D) also requires a limited partnership to hold an annual meeting of limited partners if required by statute or regulation in the state in which the limited partnership is formed or doing business or by the terms of the partnership's limited partnership agreement. Rule 5615(a)(4)(F) requires the limited partnership to distribute information statements or proxies when a meeting of limited partners is required. The proposed process described herein would apply in the identical manner to limited partnerships required to hold a meeting as it does to other companies. See also Rules 5615(a)(4)(E) and (F) (partner meetings and proxy solicitation of limited partnerships).



Hearings Panel.<sup>4</sup> NASDAQ proposes to amend Rule 5810(4), 5810(c), 5815(c) and 5820(d) to provide Staff with limited discretion to grant a listed company that failed to hold its annual meeting of shareholders an extension of time to comply with the requirement.<sup>5</sup>

NASDAQ notes that the only other rule where a company is subject to immediate suspension and delisting, besides when it fails to solicit proxies and hold an annual meeting, is when Staff makes a determination pursuant to the Rule 5100 Series that the company's continued listing raises a public interest concern. This determination generally is made only following discussion and review of the facts and circumstances with the company. For all other deficiencies under the Rule 5000 Series, a listed company is provided with either a fixed compliance period within which to regain compliance,<sup>6</sup> or given the opportunity to submit a plan to regain compliance, which Staff reviews to determine whether to grant the company a limited time to implement.<sup>7</sup> Generally, a company is allowed 45 days to submit the plan of compliance<sup>8</sup> and, upon

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<sup>4</sup> A listed company may request review of a Staff Delisting Determination by a Hearings Panel. A timely request for a hearing will stay the suspension and delisting pending the issuance of a written Panel Decision. See Rule 5815.

<sup>5</sup> The Exchange notes that companies and certain limited partnerships are also required to solicit proxies and provide proxy statements for all meetings of shareholders or partners. See Rules 5620(b) and 5615(a)(4)(F), respectively. A company or limited partnership that has not timely held an annual meeting has not violated the proxy solicitation rule because no meeting has been held.

<sup>6</sup> See Rule 5810(c)(3).

<sup>7</sup> See Rule 5810(c)(2).

<sup>8</sup> Companies deficient with the filing requirement are provided up to 60 days to submit a plan of compliance. Staff can shorten these deadlines where deemed appropriate.

review of the plan, Staff may grant the company up to 180 days from the date of Staff's initial notification of the company's non-compliance to regain compliance. If upon review of the company's plan Staff determines that an extension is not warranted, Staff will issue a Delisting Determination, which triggers the company's right to request review by a Hearings Panel.

There are a variety of reasons a company may fail to timely hold an annual meeting. In many of these cases, the circumstances that precipitated the delay may arise just before a planned meeting. For example, NASDAQ has observed cases where a company has attempted to hold an annual meeting before the deadline, but was required to adjourn and reschedule the meeting to allow its shareholders more time to review proxy materials in connection with a shareholder proxy contest. NASDAQ has also encountered companies that could not hold an annual meeting because they were delinquent in filing periodic reports and therefore could not include required financial information in a proxy statement. In that case, under the current rules, the company could receive an extension of the time to regain compliance with the filing requirement. However, if during any such compliance period the company subsequently fails to hold an annual meeting of shareholders for any reason, Staff would issue a delist determination at that time for both the filing delinquency and the annual meeting deficiency, notwithstanding that the compliance period for the filing delinquency has not expired.<sup>9</sup> Under these circumstances, as required by the Listing Rules, Staff will notify the company in writing of the annual meeting deficiency<sup>10</sup> and the company must

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<sup>9</sup> See Rule 5810(c)(2)(A).

<sup>10</sup> See Rule 5810(a).

publicly disclose such notification.<sup>11</sup> The deficiency will then be considered at the same time and together with the filing delinquency in any subsequent delisting proceeding.<sup>12</sup>

For these reasons, NASDAQ is proposing to amend Rules 5810(c), 5815(c) and 5820(d) to afford those companies and limited partnerships that fail to hold an annual meeting in accordance with the listing rules an opportunity to submit a plan of compliance for Staff's review.<sup>13</sup> Under proposed Rule 5810(c)(2)(G), Staff's written deficiency notice shall provide the Company with 45 calendar days to submit a plan to regain compliance. A non-compliant company will have to publicly disclose, under both Commission and NASDAQ rules, that it has received notification of non-compliance with the annual meeting rule.<sup>14</sup> In determining whether to grant the Company an extension to comply with the annual meeting requirement, Staff will consider the likelihood that the Company would be able to hold an annual meeting within the exception period, the Company's past compliance history, the reasons for the failure to timely hold an annual meeting, corporate events that may occur within the exception period, the Company's general financial status, and the Company's disclosures to the market. The proposed rule change will limit the length of an extension granted by Staff, upon review of the plan, to no more than 180 calendar days from the deadline to hold the

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<sup>11</sup> See Rule 5810(b).

<sup>12</sup> See Rule 5810(d).

<sup>13</sup> As noted above, the company or limited partnership generally would have 45 days to submit a plan to regain compliance, although Staff could shorten that period where it believes appropriate.

<sup>14</sup> See Rule 5810(b) and IM-5810-1. See also Item 3.01 of SEC Form 8-K.

annual meeting (i.e., one year after the end of the Company's fiscal year).<sup>15</sup> The proposed rule change will also limit the maximum length of an extension that a NASDAQ Hearings Panel or the NASDAQ Listing and Hearing Review Council<sup>16</sup> may grant for such a deficiency to no more than 360 calendar days from the date of non-compliance with the rule. In doing so, the total time that a company may be granted to regain compliance with the annual meeting requirement is unchanged from the existing rule.<sup>17</sup> The proposed rule change merely vests Staff with the limited discretion to grant an extension to regain compliance for a prescribed portion of this time. NASDAQ believes that the proposed rule change provides consistency with the administration of other continued listing standards where companies are provided a cure period or opportunity to submit a plan to regain compliance after they become deficient, without undermining the requirement that NASDAQ-listed companies hold annual meetings.

Lastly, in accordance with Rule 5810(c)(2) a company or limited partnership not subject to the all-inclusive annual fee program that submits such a plan is subject to the \$5,000 compliance plan review fee. Effective January 2018, all companies will be

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<sup>15</sup> NASDAQ has observed that a substantial majority of companies that received delisting notices for failing to solicit proxies and hold their annual meetings regain compliance within a six month period.

<sup>16</sup> The Hearings Panel reviews staff delisting determinations and the Listing and Hearing Review Council reviews Panel Decisions.

<sup>17</sup> Under the current rule, the 360 calendar day limit on extensions starts on the date of Staff's written notification to a company of the deficiency, which is typically the first business day of a calendar year for companies with calendar year fiscal years. Under the proposed rule, the 360 calendar day period would start on the deadline to hold the annual meeting, which is one year after the end of a company's fiscal year. Thus, while the proposal does not change the total length of an extension a company may be granted, the starting date for an extension period under the proposed rule would be a day or two earlier than under the current rule.

subject to the all-inclusive annual fee program and this fee will no longer be applicable to any company. Further, all companies, regardless of whether they participate in the all-inclusive annual fee program or not, are subject to the \$10,000 fee for each of a Panel hearing and appeal to the Listing and Hearing Review Council set forth in Listing Rules 5815(a)(3) and 5820(a), respectively. Accordingly, under the proposed rule as compared to the current rule, companies and limited partnerships may be subject to these fees at different times, if at all, depending on whether and when they regain compliance. Notwithstanding, a company that elects not to participate in the all-inclusive annual fee program prior to January 2018 will incur the \$5,000 compliance plan review fee whereas a company that has opted-in to the all-inclusive fee will not. This fee would be in addition to any fees incurred in the appellate process.

## 2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,<sup>18</sup> in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,<sup>19</sup> in particular, in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open

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<sup>18</sup> 15 U.S.C. 78f.

<sup>19</sup> 15 U.S.C. 78f(b)(4) and (5).

market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Specifically, the proposed changes are consistent with these requirements because they permit Staff to grant additional time to a company to comply with the annual meeting requirement in limited situations after Staff review of a compliance plan. The proposed changes, however, do not change the total length of an extension a company may be granted – as is the case under the current rule, such maximum time period would remain 360 calendar days. Furthermore, as is the case under the current rule, a company notified that it is deficient in the annual meeting requirement is required to publicly disclose such notice and the rules basis for it. NASDAQ also separately publicly discloses a list of noncompliant companies and the listing standards with which they do not comply. For these reasons, the proposed rule protects investors and the public interest.

As noted above, there are various reasons why a company may not be able to hold an annual meeting and for which immediate delisting is an inappropriate outcome under the circumstances. In lieu of the current requirement that Staff send an immediate Delisting Determination, the proposal vests Staff with discretion to determine whether the reason for the deficiency and the plan to regain compliance merit an extension. The Rules allow Staff such discretion for other deficiencies, and the only case where Staff sends an immediate Delisting Determination is where Staff has concluded, after review of the facts and circumstances, that continued listing is contrary to the public interest. NASDAQ believes that it is consistent with the Act to provide Staff with discretion to

grant an extension for an annual meeting deficiency based on a plan of compliance, consistent with the process currently used for the majority of deficiencies under NASDAQ's rules. The Exchange is not extending the total time that a company may remain listed on NASDAQ while deficient; rather, the proposed rule change will allow Staff limited discretion to grant an extension to regain compliance with the listing standard for a prescribed portion of this time, which, to the extent exercised, will limit the length of time a Hearings Panel and Listing and Hearing Review Council may subsequently grant. Accordingly, the Exchange believes that the proposal promotes the requirements of the Act by providing Staff with limited discretion to allow additional time where the circumstances do not support immediate delisting, while maintaining Staff's authority to delist a company when warranted.

The Exchange also believes that assessing the \$5,000 compliance plan review fee on companies that have not opted-in to the all-inclusive annual fee program prior to January 2018 is reasonable because NASDAQ is changing the process in an effort to make it more consistent with how other deficiencies are handled. The Exchange notes that companies that do not resolve their annual meeting deficiencies during an extension period provided by Staff under the proposed changes may subsequently be subject to the \$10,000 fee for each of a Panel Hearing and an appeal to the Listing and Hearing Review Council. However, because most companies resolve annual meeting deficiencies within six months, under the proposed rules, they would likely not incur these fees. Further, the Exchange believes that the proposed rule change is equitably allocated because the fees assessed companies as a result of the changes will be allocated uniformly among similarly-situated companies. Moreover, the Exchange believes that assessing different

fees between companies that opt-in to the all-inclusive annual fee program and those that do not is an equitable allocation because participation in the program is elective and available to all listed companies. As a consequence, companies are able to weigh the benefits of the program against the relative risk of incurring additional fees and choose whether opting-in to the program at this juncture is appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. The proposed rule change will not burden competition as it provides discretion to Staff to provide a limited time to regain compliance when immediate delisting is not warranted, thereby potentially reducing the time and costs associated with appealing a delisting determination. Moreover, the proposed rule change is intended to promote consistent and fair regulation, and is not being adopted for competitive purposes. To the extent a competitor marketplace believes that the proposed rule change places them at a competitive disadvantage, it may file with the Commission a proposed rule change to adopt the same or similar rule.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or



disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NASDAQ-2015-144 on the subject line.

##### Paper comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2015-144. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the

Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR-NASDAQ-2015-144 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>20</sup>

Robert W. Errett  
Deputy Secretary

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<sup>20</sup> 17 CFR 200.30-3(a)(12).

**EXHIBIT 5**

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are bracketed.

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**NASDAQ Market Rules****Equity Rules**

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**5810. Notification of Deficiency by the Listing Qualifications Department**

When the Listing Qualifications Department determines that a Company does not meet a listing standard set forth in the Rule 5000 Series, it will immediately notify the Company of the deficiency. As explained in more detail below, deficiency notifications are of four types:

(1) – (3) No change.

(4) Public Reprimand Letters, except such notification type is not available for unresolved deficiencies from the standards of Rules 5250(c){Obligation to File Periodic Financial Reports} and 5620(a) {Meetings of Shareholders}.

Notifications of deficiencies that allow for submission of a compliance plan or an automatic cure or compliance period may result, after review of the compliance plan or expiration of the cure or compliance period, in issuance of a Staff Delisting Determination or a Public Reprimand Letter.

(a) – (b) No change.

**IM-5810-1.** No change.

**(c) Types of Deficiencies and Notifications**

The type of deficiency at issue determines whether the Company will be immediately suspended and delisted, or whether it may submit a compliance plan for review or is entitled to an automatic cure or compliance period before a Staff Delisting Determination is issued. In the case of a deficiency not specified below, Staff will issue the Company a Staff Delisting Determination or a Public Reprimand Letter.

**(1) Deficiencies that Immediately Result in a Staff Delisting Determination**

Staff's notice will inform the Company that its securities are immediately subject to suspension and delisting when:

- a Company fails to timely solicit proxies[ and hold its annual shareholders' meeting]; or

- Staff has determined, under its discretionary authority in the Rule 5100 Series, that the Company's continued listing raises a public interest concern.

## **(2) Deficiencies for which a Company may Submit a Plan of Compliance for Staff Review**

**(A)** Unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination, the Listing Qualifications Department may accept and review a plan to regain compliance when a Company is deficient with respect to one of the standards listed in subsections (i) through (iv) below. In accordance with Rule 5810(c)(2)(C), plans provided pursuant to subsections (i) through (iii) below must be provided generally within 45 calendar days, and in accordance with Rule 5810(c)(2)(F), plans provided pursuant to subsection (iv) must be provided generally within 60 calendar days. If a Company that is not subject to the All-Inclusive Annual Listing Fee described in IM-5910-1 or IM-5920-1 submits a plan of compliance under subsections (i), (iii), or (iv), it must also pay a compliance plan review fee of \$5,000. If a Company's plan consists of transferring from the Nasdaq Global or Global Select Market to the Nasdaq Capital Market, the Company should submit its application and the applicable application fee at the same time as its plan to regain compliance, but does not need to also pay the compliance plan review fee.

**(i) – (ii)** No change.

**(iii)** deficiencies from the standards of Rules 5620(a) {Meetings of Shareholders}, 5620(b) {Proxy Solicitation}, 5620(c) {Quorum}, 5630 {Review of Related Party Transactions}, 5635 {Shareholder Approval}, 5250(c)(3) {Auditor Registration}, 5255(a) {Direct Registration Program}, 5610 {Code of Conduct}, 5615(a)(4)(D) {Partner Meetings of Limited Partnerships}, 5615(a)(4)(E) {Quorum of Limited Partnerships}, 5615(a)(4)(F) {Proxy Solicitation of Limited Partnerships}, 5615(a)(4)(G) {Related Party Transactions of Limited Partnerships}, or 5640 {Voting Rights}; or

**(iv)** No change.

**IM-5810-2.** No change.

## **(B) Staff Alternatives Upon Review of Plan**

Staff may request such additional information from the Company as is necessary to make a determination, as described below. In cases other than filing delinquencies and annual meeting deficiencies, which are governed by Rules 5810(c)(2)(F) and 5810(c)(2)(G), respectively, upon review of a plan of compliance, Staff may either:

**(i)** grant an extension of time to regain compliance not greater than 180 calendar days from the date of Staff's initial notification, unless the Company is currently under review by an Adjudicatory Body for a Staff Delisting Determination. If Staff grants an extension, it will inform the Company in writing of the basis for granting the extension and the terms of the extension;

**(ii)** issue a Staff Delisting Determination letter that includes a description of the basis for denying the extension; or

(iii) issue a Public Reprimand Letter, as defined in Rule 5805(j).

(C) – (F) No change.

### **(G) Annual Meeting**

In the case of deficiencies from the standards of Rules 5620(a), and 5615(a)(4)(D):

(i) Staff’s notice shall provide the Company with 45 calendar days to submit a plan to regain compliance with the listing standard; provided, however, that the Company shall not be provided with an opportunity to submit such a plan if review under the Rule 5800 Series of a prior Staff Delisting Determination with respect to the Company is already pending. Staff may extend this deadline for up to an additional 15 calendar days upon good cause shown and may request such additional information from the Company as is necessary to make a determination regarding whether to grant such an extension.

(ii) The maximum additional time provided by all exceptions granted by Staff is 180 calendar days from the deadline to hold the annual meeting (one year after the end of the Company’s fiscal year). In determining whether to grant an exception, and the length of any such exception, Staff will consider, and the Company should address in its plan of compliance, the Company’s specific circumstances, including the likelihood that the Company would be able to hold an annual meeting within the exception period, the Company’s past compliance history, the reasons for the failure to hold the annual meeting timely, corporate events that may occur within the exception period, the Company’s general financial status, and the Company’s disclosures to the market. This review will be based on information provided by a variety of sources, which may include the Company, its audit committee, its outside auditors, the staff of the SEC and any other regulatory body.

(3) – (4) No change.

(d) No change.

### **5815. Review of Staff Determinations by Hearings Panel**

When a Company receives a Staff Delisting Determination or a Public Reprimand Letter issued by the Listing Qualifications Department, or when its application for initial listing is denied, it may request in writing that the Hearings Panel review the matter in a written or an oral hearing. This section sets forth the procedures for requesting a hearing before a Hearings Panel, describes the Hearings Panel and the possible outcomes of a hearing, and sets forth Hearings Panel procedures.

(a) – (b) No change.

#### **(c) Scope of the Hearings Panel’s Discretion**

(1) When the Hearings Panel review is of a deficiency related to continued listing standards, the Hearings Panel may, where it deems appropriate:

(A) – (F) No change.

(G) In the case of a Company that fails to hold an annual meeting or solicit proxies, the Hearings Panel may grant an exception for a period not to exceed 360 days from the deadline to hold the annual meeting (one year after the end of the Company's fiscal year).

(2) – (4) No change.

(d) No change.

#### **5820. Appeal to the Nasdaq Listing and Hearing Review Council**

A Company may appeal a Panel Decision to the Listing Council. The Listing Council may also call for review a Panel Decision on its own initiative. This Rule 5820 describes the procedures applicable to appeals and calls for review.

(a) – (c) No change.

#### **(d) Scope of Listing Council's Discretion**

(1) – (4) No change.

(5) In the case of a Company that fails to hold an annual meeting or solicit proxies, the Listing Council may grant an exception for a period not to exceed 360 days from the deadline to hold the annual meeting (one year after the end of the Company's fiscal year).

(6) The Listing Council may also recommend that the Nasdaq Board consider the matter.

(e) No change.

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